

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

2008 SEP -2 AM 10:33

IN THE MATTER OF:)
) DOCKET NO. RCRA-05-2008-0006
)
John A. Biewer Company of Toledo, Inc.)
300 Oak Street)
St. Clair, Michigan 48079-0497)
)
U.S. EPA ID #: OHD 106 483 522)
)
Respondent)
_____)

MOTION TO STRIKE RESPONDENT'S WITNESS DISCLOSURE

The Administrator's Delegated Complainant, by undersigned counsel, pursuant to 40 C.F.R. § 22.16(a), hereby moves to have stricken Respondent's "Witness Disclosure," and a limited time extension granted to Respondent to submit a Pre-Hearing Exchange in compliance with the Administrator's Rules and the Prehearing Order of the Presiding Officer, entered on June 27, 2008. In support of this motion, Complainant states as follows:

- (1) That by rule, 40 C.F.R. § 22.19(a)(2)(i), the Administrator requires that a party submitting a pre-hearing exchange which identifies witnesses to be called at hearing include "a brief narrative summary of their expected testimony."
- (2) That in the Prehearing Order entered on June 27, 2008, the Presiding Officer requires that each party to this proceeding identify witnesses to be called at any hearing, "with a brief narrative summary of their expected testimony."
- (3) That in "Respondent's Witness Disclosure," Brien Biewer is identified as a witness that Respondent may call to testify, but Respondent fails to provide any "brief narrative summary" of his expected testimony. Respondent does no more than identify topics on which Mr. Biewer may testify. It is totally silent as to what it is that Mr. Biewer is expected to say.
- (4) That in a final decision of the Administrator, issued by the Board, it was recognized that "[b]y compelling the parties to provide [all evidence to be used at hearing and other related information] in on central submission, the prehearing

exchange clarifies the issue to be addressed at hearing and allow the parties and the [ALJ] an opportunity for informed preparation for hearing.” In Re JHNY, Inc., 12 E.A.D. 372, at 382 (2007).

- (5) That without knowing what it is that Brian Biewer intends to say at any hearing to be held in this matter, neither Complainant nor the Presiding Officer can have “an opportunity for informed preparation for hearing,” as intended by the Administrator.

Complainant would also note that Respondent has not identified any documents which it intends to attempt to introduce at hearing.

Respectfully submitted.



Richard R. Wagner
Senior Attorney

In Re John A. Biewer Company of Toledo, Inc.
No. RCRA-05-2008-0006

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CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of the **Motion to Strike Respondent's Witness Disclosure** in the office of the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604-3590, with this Certificate of Service.


I further certify that I then caused true and correct copies of the filed documents to be mailed to the following:

Honorable William B. Moran
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Ariel Rios Building, Mailcode: 1900L
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

I further certify that I then caused true and correct copies of the filed documents to be sent to the following, by mail:

Douglas A. Donnell
Mika Meyers Beckett & Jones, PLC
900 Monroe Avenue, NW
Grand Rapids, MI 49503-1423

September 2, 2008



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